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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
PAVEL IVANOVICH LAZARENKO,
Defendant.

) No. CR-00-0284 CRB
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**DEFENDANT'S OPPOSITION TO
GOVERNMENT'S APPLICATION
TO TAKE POST-CONVICTION
DISCOVERY AND REQUEST FOR
BRIEFING SCHEDULE**
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Date: September 11, 2013
Time: 2 p.m.
)
Courtroom: Judge Charles R. Breyer

On August 2, 2013 the government filed a pleading entitled “*Ex Parte* Application of the United States To Take Post-Conviction Discovery Pursuant To 21 U.S.C. § 853(m) and Federal Rule of Criminal Procedure 32.2(b)(3).” This application to take discovery relates to the forfeiture judgment entered in this case in the amount of \$22,851,000 based on the defendant’s convictions on seven substantive money laundering offenses. Defendant Lazarenko does not contest either the judgment or the government’s entitlement to demand from him any and all

Defendant's Opposition to Government's Application
to Take Post-Conviction Discovery and Request
for Briefing Schedule (CR-00-0284 CRB)

1 information concerning his personal finances; indeed, as described below, he will facilitate the
 2 collection of those assets. What Lazarenko does challenge is the government's request for a
 3 blanket order to compel third parties, none of whom are named in the application, to submit to
 4 any and all discovery requests and procedures that the government may initiate, without any
 5 showing of a particularized need to subject those third parties to such intrusions.

6 As the government's application correctly states, Rule 32.2(b)(3), Federal Rules of
 7 Criminal Procedure, authorizes the government, upon the entry of a preliminary order of
 8 forfeiture, to "conduct any discovery the court *considers proper* in identifying, locating, or
 9 disposing of the property" that has been forfeited to the United States. (Emphasis added). Given
 10 that the government is well aware of the precise location of the assets covered by the forfeiture
 11 judgment in this case, an order granting unlimited third party discovery, in a proceeding such as
 12 this one in which those third parties have had no opportunity to defend their interests, would not
 13 be "proper," within the meaning of Rule 32.2(b)(3).

14 The figure of \$22,851,000 contained in the forfeiture order is based on the total of the
 15 wire transfers alleged in the seven substantive money laundering charges--Counts Two to Eight
 16 of the amended indictment--on which defendant Lazarenko was convicted in 2004. Those
 17 charged offenses were described in the Ninth Circuit's opinion affirming Lazarenko's money
 18 laundering convictions as follows:

19 Counts 2 through 5 charged Lazarenko with money laundering, in
 20 violation of 18 U.S.C. § 1956(a)(2). The indictment specifically
 21 identified four wire transfers from Kiritchenko's ABS Trading
 account in San Francisco to Lazarenko's account in Geneva,
 Switzerland in 1994 and early 1995

22 *****

23 Count 6 alleged that in November 1997 Lazarenko laundered \$6
 24 million from a EuroFed account at Commercial Bank in San
 Francisco to another EuroFed account. Just three months earlier, in
 25 August 1997, the Commercial Bank account had received the \$14
 million transfer that was charged as wire fraud in count 26. Count
 26 7 alleged that Lazarenko laundered \$6.745 million by drawing a
 27 check on the account of one of his companies, Dugsbery, Inc., and
 28 using it to purchase a home in Marin County, California, in 1998.

1 Count 8 charges Lazarenko with an unlawful transfer of \$2.3
 2 million from one Dugsbery account at WestAmerica Bank to
 another at Bank Boston Robertson Stevens, also in 1998.

3 *United States v. Lazarenko*, 564 F.3d 1026, 1032, 1037 (9th Cir. 2009)

4 The Marin County home that is the asset, or substituted asset, at issue in the Count Seven
 5 offense—100 Obertz Lane in Novato— is now in the possession of the government. The parties
 6 have agreed on a procedure for dealing with the personal property in the residence. Thus it is the
 7 funds at issue in Counts Two to Six and Eight, described above, which remain to be obtained by
 8 the government. But the location of those forfeited assets is well established. After the transfers
 9 alleged in the money laundering charges in the indictment, these funds eventually were
 10 transferred to accounts belonging to Lazarenko in various locales. All of Lazarenko’s accounts
 11 have been frozen by the United States government and are now within the jurisdiction of the
 12 United States District Court in Washington, D.C., in the civil action of *United States v. All Funds*
 13 *Held at Bank Julius Baer & Company, ltd.*, 1:04-cv-00798-PLF.

14 The funds at issue in the D.C. action exceed \$250,000,000. While the defendant does
 15 dispute the government’s right to forfeiture of all of those funds, the vast majority of which have
 16 not been proven to be the proceeds of any criminal activity, he does not dispute the right of the
 17 government to possession of the funds covered by the forfeiture judgement in this case. At the
 18 hearing on the government’s application on September 11th, Mr. Lazarenko will place on the
 19 record his abandonment of any claim to that portion of the funds at issue in the D.C. action
 20 which is covered by this Court’s forfeiture order.

21 Mr. Lazarenko was just released after spending fifteen years in custody. During that time,
 22 the federal government has located all of his assets around the world and brought them into the
 23 jurisdiction of the federal courts. The funds covered by this Court’s forfeiture order are located
 24 within the jurisdiction of the D.C. district court. Mr. Lazarenko has provided, and will continue
 25 to provide, all financial information requested of him by the government. In light of the above
 26 facts, the government is not entitled to an order authorizing it to take any and all discovery from
 27

1 third parties without first making a showing of particularized need.

2 **CONCLUSION**

3 For the reasons stated, the government application to take third party discovery without a
4 prior showing of particularized need should be denied.

5 Dated: August 23, 2013

6 Respectfully submitted,

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9

10 By: /s/ Dennis P. Riordan

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15 Attorneys for Defendant
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